



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,776	10/11/2001	Michael C. Dapp	02890037AA	7587

181 7590 12/13/2005

MILES & STOCKBRIDGE PC
1751 PINNACLE DRIVE
SUITE 500
MCLEAN, VA 22102-3833

EXAMINER

HENEGHAN, MATTHEW E

ART UNIT	PAPER NUMBER
----------	--------------

2134

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/973,776	Applicant(s) DAPP, MICHAEL C.	
	Examiner Matthew Heneghan	Art Unit 2134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17, 19, and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/27/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In response to the previous office action, Applicant has amended claims 1 and 2 and added claims 11-20. Claims 1-20 have been examined.

Information Disclosure Statement

2. The following Information Disclosure Statement in the instant application has been fully considered:

IDS filed 27 June 2005.

Drawings

The drawings were received on 22 September 2005. These drawings are acceptable.

Double Patenting

3. In view of Applicant's amendments to the claims, the previous rejections over the doctrine of double patenting are withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 11-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 11 recites a computer program that comprises a computer readable medium in the second limitation; in other words, it claims computer software that contains computer hardware. The specification does not disclose a computer program that contains a computer readable medium; it is well-known in the art for computer readable media to contain computer programs, however.

Claims 12-15 depend from rejected claim 11, and include all the limitations of that claim, thereby rendering those dependent claims as failing to comply with the written description requirement.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 2134

5. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the phrase “disconnecting, at least temporarily” in line 12 renders the claim indefinite because it is not clear as to whether or not it must be possible to reconnect the nodes. It is being presumed that the nodes must be reconnectable after disconnection.

Claims 2-10 depend from rejected claim 1, and include all the limitations of that claim, thereby rendering those dependent claims indefinite.

Claim 11 recites a computer program that comprises a computer readable medium in the second limitation; in other words, it claims computer software that contains computer hardware. The specification does not disclose a computer program that contains a computer readable medium; it is well-known in the art for computer readable media to contain computer programs, however.

Claims 12-15 depend from rejected claim 11, and include all the limitations of that claim, thereby rendering those dependent claims indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 2134

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 16, 17, 19, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,321,338 to Porras et al.

As per claim 16, Porras discloses a hierarchical network surveillance system wherein information is gathered by service monitors, sent up to domain monitors, and then passed on to enterprise monitors (see column 3, line 55 to column 4, line 47). Countermeasures at lower nodes may be dictated by higher nodes (see column 12, lines 7-19). Data may be collected and forwarded for attacks of unknown origin, such as spoofing or anonymous FTP attacks (see column 7, lines 43-54). A monitor must necessarily append additional information to information being forwarded to the next higher level. Communications among monitors may be done via a subscription scheme, thus segregating it from user traffic and making it user-transparent.

As per claims 19, a VPN is used, which is secure.

As per claim 17, countermeasures may include the severing of channels or reconfiguration of logging facilities. Any reconfigured area is, by definition, critical. These countermeasures constitute a secure mode.

Regarding claim 20, since the communications are user-transparent, the hierarchy is also hidden to users.

Allowable Subject Matter

7. Claims 1 and 11 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

8. Claims 2-10 and 12-15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. Claim 18 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter:

Though the taking of nodes off-line in the course of network troubleshooting is well-known in the art, no art could be found that specifically suggested that a node be temporarily taken off-line in order to isolate the source of a network intrusion in a hierarchically-designed network topology in a real-time setting. U.S. Patent No. 6,684,335 to Epstein, III et al. discloses the taking of nodes off-line up to an intrusion point, but does so in a manner that makes it impossible to bring the nodes back into service afterwards.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew E. Heneghan, whose telephone number is (571) 272-3834. The examiner can normally be reached on Monday-Friday from 8:30 AM - 4:30 PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse, can be reached at (571) 272-3838.

Any response to this action should be mailed to:

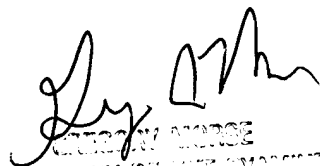
Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

Or faxed to:

(571) 273-3800

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


GREGORY MORSE
SUPERVISOR, PATENT EXAMINATIONS
TECHNICAL STAFF, ART UNIT 2134

Application/Control Number: 09/973,776

Page 9

Art Unit: 2134

MEH *MEH*

December 12, 2005